## IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS LUBBOCK DIVISION

STATE OF TEXAS AND TEXAS DEPARTMENT OF TRANSPORTATION, Plaintiffs, v. U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, Civil Action No. 5:23-cv-304 PETE BUTTIGIEG, in his official capacity as SECRETARY OF TRANSPORTATION, and SHAILEN BHATT, in his official capacity as ADMINISTRATOR OF THE FEDERAL HIGHWAY ADMINISTRATION, Defendants.

## TEXAS'S ADVISORY TO THE COURT

Plaintiffs (Texas) provide the following update regarding their request for emergency relief. The Defendants have agreed to further extend the Final Rule's initial deadline from March 17, 2024 to March 29, 2024. Counsel for the parties have continued to confer on a potential briefing schedule so the Court can fully resolve this case on the merits through cross motions for summary judgment. Texas intends on formally withdrawing its motion for preliminary injunction, *see* Dkt. 9, no later than February 7, 2024 if the Court agrees the following proposed schedule provides sufficient time to resolve this case on the merits before the Final Rule's extended deadline on March 29, 2024.

The parties provide the following proposed briefing schedule for the Court's consideration:

- January 31, 2024 Defendants file the administrative record for the Final Rule;
- February 9, 2024 Texas files its motion for summary judgment;
- February 20, 2024 Defendants file their combined response to Texas's motion for summary judgement and their own cross-motion for summary judgment;
- February 27, 2024 Texas files its combined response to the Defendants' crossmotion and its reply in support of its motion for summary judgment;
- March 5, 2024 Defendants file their reply in support of their cross-motion.

The parties still agree that the Court may resolve this matter on the papers and defer to the Court on the necessity for a summary judgment hearing ahead of the March 29, 2024 deadline. If the Court sets a hearing, it would not be evidentiary, and the parties would provide oral argument in support of their positions.

If the Court believes this schedule will not provide sufficient time to resolve this case on the merits, then the parties will proceed with the preliminary injunction briefing schedule ordered by the Court. *See* Dkt. 12.

Dated: January 26, 2024 Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I certify that on January 26, 2024, a copy of the foregoing document was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on all attorneys of record in this case.

/s/ Logan Harrell LOGAN HARRELL

Assistant Attorney General